

REMARKS

The Office Action dated May 14, 2003 has been carefully reviewed. Claims 1-12 are pending in this patent application. By this amendment, the specification has been amended. Reconsideration of this application is respectfully requested.

Remarks Regarding Priority

The specification has been amended to recite the appropriate provisional application to which priority is claimed as suggested by the Examiner.

Allowable Subject Matter

Claims 2, 4, 7, and 11 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Such rewriting has not been done since the claims from which these claims depend are themselves believed to be in allowable form.

35 U.S.C. § 102 Rejection

Claims 1, 3, 5, 6, 8-10 and 12 were rejected under 35 U.S.C. § 102 as being anticipated by Schönhöffer (DE 19622827). Reconsideration of claims 1, 3, 5, 6, 8-10 and 12 is respectfully requested.

Discussion Regarding Patentability of Claim 1

Claim 1, inter alia, recites the following limitations:

each of the at least one end caps including ... a cap side wall extending between the inner and outer ends and *engaging the spacer side wall to provide a mechanical connection between the at least one cap and the spacer ...* .
(Emphasis added.)

It is axiomatic that anticipation of a claim under 35 U.S.C. § 102 is proper only if the prior art reference discloses each and every element of the claim. The side wall of Schönhöffer's cap 1 does not engage the wall of the spacer 2 to provide a mechanical connection between the at least one cap 1 and the spacer 2 as required by claim 1. Rather, according to Schönhöffer's claimed invention, the sleeve of the inner implant (i.e. implant part 1) is axially slidable in the sleeve of the outer implant part (i.e. implant part 2). (See Schönhöffer's claim 1 at column 4, lines 33-34.)

On the other hand, it should be appreciated that the inner implant part 1 is provided with external threads that mate with internal threads of the central implant part 3. (See Schönhöffer at column 3, lines 42-44.) By rotating the inner implant part 1 in relation to the central implant part 3, the axial position of the inner implant part 1 can be changed from its position in Fig. 1 to its position in Fig. 2. (See Schönhöffer at column 3, lines 48-55.) Also, the axial position of inner implant part 1 can be fixed by tightening a clamping screw 10. (See Schönhöffer at column 4, lines 11-13.)

Thus, among other limitations, Schönhöffer fails to teach *a cap side wall extending between the inner and outer ends and engaging the spacer side wall to provide a mechanical connection between the at least one cap and the*

spacer. Schönhöffer simply lacks this claimed feature. Since Schönhöffer does not disclose each and every element of Applicants' claim 1, Schönhöffer does not anticipate claim 1.

Discussion Regarding Patentability of Claim 3

Claim 3 depends directly from independent claim 1. As a result, claim 3 is allowable for, at least, the reasons hereinbefore discussed with regard to claim 1.

Discussion Regarding Patentability of Claim 5

The discussion relating to the patentability of claim 1 is relevant to the patentability of claim 5. Thus, claim 5 is allowable over the cited art.

Discussion Regarding Patentability of Claims 6 and 8

Each of claims 6 and 8 depends directly from independent claim 5. As a result, each of claims 6 and 8 is allowable for, at least, the reasons hereinbefore discussed with regard to claim 5.

Discussion Regarding Patentability of Claim 9

The discussion relating to the patentability of claim 1 is relevant to the patentability of claim 9. Thus, claim 9 is allowable over the cited art.

Discussion Regarding Patentability of Claims 10 and 12

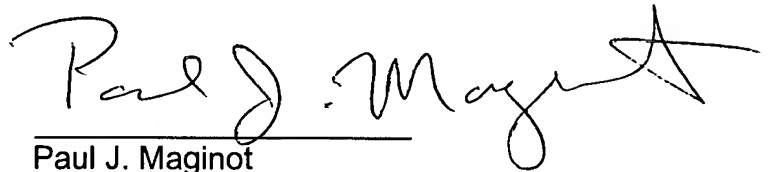
Each of claims 10 and 12 depends directly from independent claim 9. As a result, each of claims 10 and 12 is allowable for, at least, the reasons hereinbefore discussed with regard to claim 9.

Conclusion

In view of the foregoing amendments and remarks, it is submitted that this application is in condition for allowance. Action to that end is hereby solicited.

Respectfully submitted,

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A handwritten signature in black ink, reading "Paul J. Maginot", with a stylized flourish at the end.

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September 15, 2003

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